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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/008,393	11/06/2001	Kevin B. Tuck	206-004	2866
33354 7590 09/11/2007 ETHERTON LAW GROUP, LLC 5555 E. VAN BUREN STREET, SUITE 100 PHOENIX, AZ 85008			EXAMINER FARAH, AHMED M	
			ART UNIT 3735	PAPER NUMBER
			MAIL DATE 09/11/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/008,393

Applicant(s)

TUCEK, KEVIN B.

Examiner

Ahmed M. Farah

Art Unit

3735

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 August 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 and 35-64 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-19 is/are allowed.
- 6) ☒ Claim(s) 35-64 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>8/10/2006; 8/24/2007</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Note: The United States District Court For The District of Arizona interprets the term "optical arrangement" as:

"a collection comprising two or more mirrors, lens, prisms, or other optical devices, placed in some specified configuration, which reflect, refract, disperse, absorb, polarize, or otherwise act on light."

See the Court Order Construing Patent Claim Terms, Erchonia Medical Inc. v. Smith, 06-08-2006, Case No.: CIV 02-2036-PHX-MHM.

However, the examiner gives the claim language its broadest reasonable interpretation in light of and consistent with the written description.

Therefore, contrary to the Court's interpretation of the term, the Examiner interprets that "optical arrangement" may consist of only one optical element (e.g. a lens) positioned relative to a light source. Such a case is a collimating lens disposed in front of a stationary (fixed-position) light source to collimate a light produced by said light source (see attached Appendix 1). This is due to the fact that in order to position/arrange a collimating lens in relation to a light source, one must take into account the focal length of the collimating lens, and the appropriate distance between the light source and the collimating lens.

For example, U.S. Patent No. 5,464,436 to Smith (hereinafter Smith) discloses a housing comprising a point source (diode laser) and collimating convex lens. Since the diode laser is fixedly positioned within the housing, the position of the collimating lens within the housing must be determined and arranged relative to the light source in order to provide a collimated light beam. Therefore, in this Office Action (OA), the examiner takes the position that an "optical arrangement" can be only one optical element, such

as a collimating lens, because the lens has properties (e.g. focal length, refractive index, etc.) that need to be considered when arranging the lens in relation to a light source.

Claim Objections

1. Claims 62-64 are objected to because of the following informalities: these claims are not underlined as required for the claims introduced into a reissue application.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 35, 36, 38, 39, 41, 43, 44, 46, 47, 50, 57 and 58 are rejected under 35 U.S.C. 102(b) as being anticipated by Ohshiro et al. US Patent No. 4,905,690.

Ohshiro et al. teach a semiconductor laser treatment device in which it is disclosed that the device contains:

(a) a wand regarded as a radiation delivery device 1, and is regarded as being a substantially elongated hollow tube;

(b) means for generating a laser beam via semiconductor laser 10;

(c) a combination of a cylindrical lens 19 and focusing lens 7;

(d) a housing separate from the wand, which is shown in Figure 8;

(e) means for supplying electrical power to the laser generation means contained in the wand;

(f) means for electrically connecting the wand to the housing via a cable, 66; and

(g) means for controlling a period of time of laser generation via the time control circuit, 39. Additionally, see Figures 1, 7. and 8.

The laser diode is regarded as being of the type which uses less than one watt of power, since this device is for use in the treatment of tissue and a large power usage would cause damage to the tissue. Finally, as shown in Figures 8 and 9. the housing contains a cradle for releasably securing the wand therein.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 50-56, 59-61 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Smith US Patent No. 5,464,436.

Smith discloses a hand-held laser device 1 for use in medical therapy, the device comprising:

(a) a handpiece in the form of substantially elongate tube (see Fig. 1) capable of being retained in a hand of a user and freely moved relative to the surface of the skin of a patient receiving light therapy;

(b) a laser disposed in the handpiece for generating a beam of laser light for providing the treatment/therapeutic light (see col. 3, lines 10-15); and

(c) an optical arrangement (collimating lens, see col. 3, lines 20-22) disposed in the handpiece for receiving a light beam from the laser and for transforming/collimating said laser light beam into a line of laser light beam at a desired location on the patient's skin surface as claimed, except the laser light is not in the visible region (400-700 nm) of the EM spectrum to the user as presently claimed.

The laser source of Smith provides light in the near IR wavelength range of the EM spectrum, between 800-870 nm (see col. 3, line 16). However, the use of diode laser in providing a visible light is well known in the medical art. Moreover, Smith teaches in the background section of his written description that, although not preferred for his invention, the use of laser light having wavelength shorter than 800 nm is known in the art (see col. Col. 4, lines 33-34).

Hence, at the time of the applicant's invention, it would have been obvious to one skilled in the art to modify Smith and use a laser source, which provides a visible light, as equivalent alternative light source to provide a desired treatment light (Poppas et Al. US Pat. No. 5,409,481 discloses a tissue welding apparatus comprising a diode laser with provide a treatment light in the wavelength of approximately 500-820 nm, see col. 3, lines 12-16).

With respect to claims 51-53, handpiece of Smith comprises a squeezable annular switch 2 configured to activate and deactivate the light source (see col. 3, lines 48-50).

With respect to claims 54-56, Smith fails to teach light switches as claimed. However, the use of light activating switches, such as push buttons and switches with multiple stages are known in the art. Hence, at the time of the applicant's invention, one of ordinary skill in the art would have used one of the known light switches as an equivalent alternative light switch to activate the light source as claimed.

With respect to claims 59 and 60, the optical arrangement is a single collimating lens (see col. 11, lines 26-34).

With respect to claim 61, the device further comprises a battery operably connected to the laser source as presently claimed (see col. 3, line 15).

4. Claims 37, 40, 42, 48, 49, and 62-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over view of Meserol (US Patent No. 5,474,528).

Ohshiro et al. and Blum et al. do not teach that the means for supplying electrical energy is a battery or that a clip is contained on the housing in order to allow the device to be worn on an article of clothing of the user of the device. Meserol teaches another alternative medical treatment device in which it is disclosed in Figure 7 that it is known to power medical laser treatment devices with batteries, 78, and that a clip, 73, can be used in order to permit the device to be clipped onto an article of clothing. Additionally see column 9, lines 37-41, and column 9, lines 12-16, respectively. Therefore, it would have been obvious to one skilled in the art to modify the combined device of Ohshiro et al and Blum et al. to provide batteries as the power supply as an alternative, equivalent means to energize the device and to provide a clip on the housing in order to permit the

device to be worn by a user, which facilitates portability of the device in order to free the hands of a user during use.

Allowable Subject Matter

Claims 1-19 are allowed.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ahmed M. Farah whose telephone number is (571) 272-4765. The examiner can normally be reached on Mon, Tue, Thur and Fri between 9:30 AM 7:30 PM.

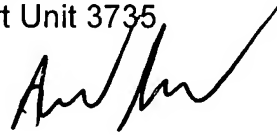
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marmor II Charles can be reached on (571) 272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO

Customer Service Representative or access to the automated information system, call
800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ahmed M Farah
Primary Examiner
Art Unit 3735

August 27, 2007.

A handwritten signature in black ink, appearing to read 'Ahmed M Farah', is written over the printed name and title.

Appendix 1 (A)